

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 65207 / August 26, 2011

INVESTMENT ADVISERS ACT
Rel. No. 3264 / August 26, 2011

Admin. Proc. File No. 3-13532

In the Matter of

ERIC J. BROWN, MATTHEW J. COLLINS, KEVIN J.
WALSH, AND MARK W. WELLS

ORDER DIRECTING THE
FILING OF ADDITIONAL
BRIEFS

Eric J. Brown and Kevin J. Walsh, formerly associated with registered broker-dealer Prime Capital Services, Inc. ("Prime Capital"), and Matthew J. Collins and Mark W. Wells, currently associated with Prime Capital (collectively, "Respondents"), appeal from the decision of an administrative law judge. The law judge found that, in sales of variable annuities to elderly customers, Respondents violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5,¹ and Exchange Act Section 17(a) and Exchange Act Rule 17a-3.² The law judge also found that Collins failed to reasonably supervise Brown within the meaning of Exchange Act Sections 15(b)(4)(E) and 15(b)(6).³ For these violations, the law judge issued cease-and-desist orders against Respondents, ordered Respondents to disgorge commissions earned from selling certain variable annuities, barred Respondents from associating with any broker, dealer, or investment adviser, and imposed a third-tier civil monetary penalty of \$130,000 against each Respondent. The Division of Enforcement (the "Division") cross-appeals, contending that the law judge's imposition of civil monetary penalties "should have been significantly greater."

On August 24, 2011, during oral argument before the Commission, Brown's counsel asserted that his client had admitted to his misconduct and had cooperated with the Division in

¹ 15 U.S.C. §§ 77q(a), 78j(b); 17 C.F.R. § 240.10b-5.

² 15 U.S.C. § 78q(a); 17 C.F.R. § 240.17a-3.

³ 15 U.S.C. § 78o(b)(4)(E), (b)(6).

good faith during the proceedings below. Counsel argued that, because of this cooperation, the Commission should not impose sanctions greater than those that the administrative law judge imposed below. Brown, however, did not raise this issue in his petition for review and he failed to file any briefs in support of his petition for review. The Division did not respond to the assertions made by Brown's counsel during its portion of the oral argument. For these reasons, it appears that the Commission would benefit from further briefing by the parties.

Accordingly, it is ORDERED that the parties shall be permitted to file additional briefs clarifying the extent of Brown's cooperation with the Division in this matter and how that cooperation, if any, should affect the imposition of sanctions. Any such brief shall be filed within ten days from the date of service of this order and shall not to exceed 5,000 words.

For the Commission by the Office of the General Counsel, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary